

## **Adverse conceptual representations of children in rape & sexual assault cases in England and Wales, in legal processes and the media**

Luchjenbroers, June; Aldridge-Waddon, Michelle

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Title: **‘Adverse conceptual representations of children in rape & sexual assault cases in England and Wales, in legal processes and the media.’**

Authors: Dr June **Luchjenbroers** – Bangor University, Wales UK &  
Dr Michelle **Aldridge-Waddon** – Cardiff University, Wales UK

### ***Abstract***

The primary issue to be addressed in this paper is to offer a cognitive linguistics analysis of the language used to and about children in the judicial system of England and Wales, as well as the reports of such cases in UK media. An ongoing issue for the treatment of children has been how they are questioned by the police and in court. In our earlier research, as well as that of other forensic researchers, a number of outdated, social myths persevere in rape cases involving both adults and children. These myths include the ‘Rape Myth’ and the ‘Autonomous Testosterone Myth’, but for children also include other adverse, expected patterns of behaviour, such as a general expectation that ‘children lie’, ‘children cannot differentiate truth from fiction’, and ‘children are easily confused about other people’s intentions’.

In this paper, we first offer a review of the legal process in England and Wales involving children, before illustrating how the above myths and expectations are triggered by the questions put to witnesses. This analysis will show how these associations, which are part of each person’s encyclopaedic knowledge in the form of conceptual frames and ICMs, are networked in elaborate semantic fields that potentially trigger inferential information that can prejudice hearers (such as jurors and media readers) against those same child victims.

## 1. Introduction

In the 1980's and 90's, researchers identified a particular, adverse representation of rape victims that emerged from the questions put to them in court: the so-called, 'Rape' myth (Aldeer 1987; Matoesian 1993; Ehrlich 2001). More recently, we put forward the 'Autonomous Testosterone' myth, which complements the earlier, rape myth (Aldridge & Luchjenbroers 2007, 2008, 2011; and Luchjenbroers & Aldridge 2007, 2013) in that it offers an explanation of how men have been characterized as 'victims' of a woman's allure only to find themselves accused of rape. Although these myths were not analysed in cognitive linguistics terms, they nevertheless capture, in part, the conceptual frames that have been used to generate adverse, representations of rape/ sexual assault victims in the legal process across countries. Of further, particular interest to us is the relevance of these adverse representations to the treatment of children in court, who are legally beneath the age of 'consent'. In this paper we consider the questions put to children in cognitive linguistics terms (conceptual frames and ICMs) in order to gain insight into the conceptual underpinnings of these myths/representations that add to the difficulties even children have in achieving justice in court. We also consider whether these representations are still apparent in recent media reports of rape cases, which can offer some explanation of the continued use of these representations despite attempts by UK legal process to combat these prejudices.

## 2. CONCEPTUAL FRAMES and ICMs

Fundamental to the 'cognitive linguistics' approach to language production and comprehension is the assumption that word, sentence, and discourse meanings draw on conceptualizations that are shaped by personal experience. There is a huge body of research from linguistics, as well as Philosophy (cf. Minsky 1975a, b), Psychology (cf. Johnson 1987/2013), and Artificial Intelligence (cf. Schank and Abelson 1977) that have evidenced continuities between language and experience. In this way, the use of a word is tailored by the user's field of experience, which determines when the use of a word may be deemed appropriate, but also how a network of expectations are triggered when the concepts related to those words are accessed. For example, the English word *bachelor*, if defined simply as an 'unmarried man', is somehow inappropriate in reference to the Pope, Moslem men with three wives (but allowed four), or divorcees (Lakoff 1983, 1987). This is because the essence of 'eligibility' and 'inclination' to marry is part of the concept even though the minimalist definition does not explain these assumptions. Similarly, for us this concept also triggers presumptions of 'reasonable affluence', meaning that a homeless man in his 50s is unlikely to be referred to as a *bachelor*, even though he well may be an 'unmarried man'. Hence, this encyclopaedic approach to meaning clarifies how different language users may include different presumptions for the appropriate use of a word, like *bachelor*, drawing on their own experiences in society.

In this way, Fillmore's work on 'conceptual frames' captures more than just the prototypical, narrow sense of a given word, but also the prototypical context of it's use,

making additional associations available when a word triggers a particular concept (cf. Fillmore 1975, 1977, 1982, 1985). For example, Fillmore's well known 'restaurant frame' (1982) immediately makes associated information conceptually 'available' without the need for expressed, lexical reference – see (1) below:

(1) *I had a sandwich at the university canteen.*

The speaker would not need to additionally convey that the sandwich had been paid for, or that payment preceded consumption, as the speaker's understanding of how canteens work (in the UK) will trigger that information for possible reference should further discourse require it, such as in (2) below:

(2) *It wasn't what they said it, was so I got a refund.*

So, together with an expectation that other members of the same community of practice would have access to the same or a very similar pattern of experience, the user's conceptual frame of 'University canteens' would provide the component of 'payment before consumption', bridging the gap between examples (1) and (2). In effect, frames capture the body of social expectations (not just personal expectations) associated with each lexical choice, and these expectations might not be lexically apparent. Hence this conceptual network of additional information would complement the information provided lexically and would influence the comprehender's understanding of the discourse they are exposed to.

Hence, the conceptual frames approach to word senses captures associations with related information in memory, drawn from the users' experience. Similarly, Lakoff (1987) proposed that different contextual uses of a given word, sometimes cohere into a more general, conceptual representation, called an 'Idealised Cognitive Model' (or ICM). An ICM captures the full set of social expectations associated with the concept triggered by a particular word. For example, the various uses of the English word, 'mother' draw on a range of different social (component) models, including: *working mother* or *housewife mother*, *birth mother*, *adoptive mother*, *surrogate mother*, *real mother*, *child mother*, etc. Lakoff explained that these examples capture the range of potential associations triggered by the word 'mother'.

In effect, the ICM captures separate elements (or 'models') of what American society generally associates with the concept of a 'mother' -- i.e., she is a mature woman (and not too young), who would produce the egg, that is fertilized by the father, who she is married to; She might work but also might stay at home; she would carry the foetus full term to birth; and is the primary caretaker. Essentially, this is the prototype for this word; although not all uses match the prototype perfectly. In today's society, many instances of 'mother' exist that do not utilize every expected component of this ICM, but possibly just a subset (e.g., an *adoptive mother* is legally the mother, who might stay at home or go out to work, and she is the primary caretaker, but she did not have the child in utero and bear it, and might not have been inseminated by the married father. Such component models are drawn from the more general ICM, which enables us to understand non-prototypical cases, such as given in (3) below:

(3) *My third foster mum is the only real mother I have ever known.*

Even though for many users, a ‘real mother’ is also the ‘birth mother’, we can make sense of (3) by drawing on one particular component model from the more general ICM: the primary caretaker mother. It is also clear from (3) that the ‘caretaker’ component is held here more highly than other component features, even though others may have a different perception of what makes a ‘real’ mother. In effect, a person’s ICM reflects the sum of that individual’s social expectations concerning a given concept triggered by a particular word, and instances of use are measured against those general expectations (Lakoff 1990). From this perspective, words do not need to fit the world, but instead, fit our ICMs of what we expect to find in it.

In our research, conceptual frames and ICMs are used in the analysis of the language produced in legal settings in cases of rape and/or sexual assault. The importance of a complete linguistic analysis of not just the language used but the conceptual mappings that would follow from the lawyers’ choices (or media’s choices) of language is paramount, as in cases such as these the information provided in the victim’s account may be the only evidence available. The following section will offer some background into the legal system of England and Wales, leading to the myths recognised in earlier works, before dealing with the adverse representations of children generated by specific ICMs, triggered by lawyer questioning.

### **3. LANGUAGE in the LEGAL PROCESS**

In England and Wales, a number of witness types have been identified as particularly disadvantaged in the legal process. These witnesses include ‘vulnerable’ witnesses (such as children under the age of consent) and ‘intimidated’ witnesses (such as rape victims and those involved with violent crimes). In order to redress this disadvantage, a number of ‘special measures’ have been introduced to improve these witnesses’ performance in the initial police interview and in court (alleged victims not perpetrators of crime), to better enable them to give an accurate and coherent testimony (cf. Home office 1992, 2000, 2002). These special measures may now include: a visual barrier in court between the victim and the defendant/perpetrator; being cross-examined via video-link to a different location; and/or the initial police interview with the victim being videoed and offered in court as the victim’s Examination-in-Chief, in lieu of direct questioning by the prosecution barrister. Each of these measures need to first be granted by the trial judge in each case where any or all of these measures may be denied.

A significant problem for victims with this procedure is that the videoed, police interview must serve two objectives: (i) to inform the CPS (Crime Prosecution Service) of all possible aspects of an alleged crime, the basis of which they can decide whether to pursue a case in court; and (ii) represent the victim’s case in court. This is problematic because the police interview involves questions that are not allowed in open court, such as questions regarding the victim’s sexual history. Unfortunately, the police need to investigate both the (alleged) crime and the victim as thoroughly as possible which

results in questions to the victim that are not necessarily victim-friendly. In essence, the police-video, if given as the victim's Examination-in-Chief, includes questioning that may also challenge the victim and the alleged crime in a manner that is not likely to be consistent with how a prosecution barrister would question their claimant (cf. Aldridge & Luchjenbroers 2008; Luchjenbroers & Aldridge 2013). In essence, the victim's case, her choices, her character and her past are investigated in her Examination-in-Chief (by the police), making the pursuit of all these issues also open to Cross-Examination by the Defense. Even though the statistics for children's prosecutorial success is not calculated separately from adult claimants in England and Wales, after years of 'special measures', the overall success of conviction in rape cases is repeatedly reported around 5-6%,<sup>1</sup> and most cases (roughly three-quarters) never make it to trial.

As problematic as the use of the videoed, police interview in court is for child witnesses, a far more problematic issue for rape victims (whether adult or child) is that in many cases, the verbal testimony of the victim may be the only type of evidence available. Added to this is a potentially low linguistic maturity among some child witnesses in terms of, (i) an inability to properly narrate what has happened to them; (ii) an insufficient knowledge of the lexical descriptions for sexual activity as produced by the police or in court; and (iii) a poor ability to answer questions that would castigate themselves in a more prodigious light. Essentially, children often lack the linguistic skills necessary to recognise whether the questions put to them by the police or in court, are victim friendly or not; and if they do recognise the questions as potentially hostile, they are often powerless to respond in a way that will improve jurors' perceptions of themselves.

For example, when a 10 year old boy in a physical abuse case was asked, "*Are you the kind of lad who runs away from a fight or an argument?*" (Aldridge & Luchjenbroers 2007). A 'yes' would require the boy to declare himself a coward, as 'coward' is triggered by a frame based recognition that 'running away from a fight' (from a threat) is something that only a coward would do. So, of course the boy answers 'No', seemingly oblivious that his answer also accepts that he would 'stand up to ... an argument' which could instead trigger a frame of 'bully' or 'trouble maker'. This was by obvious design by the questioning barrister as this sequence was used before subsequent questioning that triggered a parental frame, in order to qualify why more aggressive measures may have been, unavoidably or understandably, taken by the adult in this case.

Further problems, more central to the concerns of our research, include the preponderance of police and barrister questions in court that dwell on both outdated and inappropriate social models of expected choices and behaviours in a rape/sexual assault situation. In such cases, however, we can expect that jurors' prior experiences of rape or sexual assaults would only be by word of mouth (or the media), and not personal experience. Because barristers can exclude jurors, we can assume that prior experience will be grounds for exclusion by either the prosecution or the defense. This means that the nature of talk by the police, in court and in the media are relevant when investigating the relevant frames and ICMs used to break down whether a crime has

occurred. In the following sections we will outline the Rape myth, followed by the Autonomous Testosterone myth, before turning to the nature of the questions put to victims and the descriptions of such cases made to the media.

### ***The ‘Rape’ myth***

The nature of the questions put to victims (adult or child) reveal how outdated assumptions persist about what type of person can be a ‘true’ victim of rape. These stereotypical assumptions include that ‘she’ is a decent, married woman (so her sexual needs would be satisfied elsewhere), who offers no advances or provocation to the rapist whatsoever (so that he would not misunderstand her intentions), and who is subjected to a completely unjustified and unexpected attack, for which she would be able to evidence wounds due to her resistance (see also, Larcombe 1994, and Temkin 2010). In effect, the identified features of the Rape myth cover much of what is included in an ICM of a ‘true’ rape, and it is this model that the legal profession in particular seems loathe to abandon, even though advice on the CPS website warns against the associated presumptions.<sup>2</sup>

Further assumptions stemming from the ICM of a ‘true’ rape, include that ‘she’ would take reasonable steps to avoid a rape situation (i.e., avoid disreputable establishments; avoid dress and use makeup choices that might send the wrong signals; and she would not be provocative in her behaviours); and if in trouble, she would be expected to make a reasonable attempt of escape. In fact, this stereotypical image is so persistent that both police and barristers ask questions to alleged victims that speak to these prejudices.

Hence, the word ‘Idealised’ in ICM does not mean ‘the best’ or ‘optimal’, but instead conveys ‘principle, in that it captures a consistent reoccurrence of features associated with a particular word. Even though much of the ‘rape’ ICM has been rejected in many circles,<sup>3</sup> jurors are still encouraged to have certain expectations about what a rape is and how a ‘true’ victim would behave, and when a claimant’s case before them is not 100% consistent with that representation, the defense effectively conveys ‘reasonable doubt’.

### ***The ‘Autonomous Testosterone’ myth***<sup>4</sup>

This myth complements the Rape myth in that it centres on what kind of man would carry out such an act (or need to) and what can be expected of any man. In effect, when women dress provocatively, and frequent the kind of bars where sexual partners can be found, and/or is not wounded in the sex event (so she didn’t fight back and if there are scratch marks, some girls like it rough), then sex must have been consensual or ‘she asked for it’. This then shifts the blame in rape cases to the alleged victim who is portrayed as responsible for ‘luring’ an otherwise upstanding (young) man into a sexual situation where he is then accused of rape. More importantly, following this myth, the man in the sex event cannot be blamed for partaking in sex, when the behaviour and choices of the female indicated her willingness for sex.

This then mixes the presumption that once aroused, a man can’t help but finish the

deed, with the need for women to take responsibility for luring a man into that position. Therefore, he would be justified in believing that this partner was both willing and actively pursuing sex, if she sent out those cues. As a result, any question of rape is a matter of (possible) miscommunication, and if so, the man in question is not a villain but a victim of the legal process and the accusations being made by a vindictive woman with other, more devious objectives (which are often not explained).

Importantly, the ICM of a ‘rapist’ is actively cultivated as someone who is otherwise unknown, single and not so young, and would be visibly ‘dangerous’, so that anyone could avoid being a victim by avoiding anyone filling all these criteria. The consequence of this position is that a victim who dress like her peers or famous people in magazines; and behaves in a manner typical of her peers; and frequents the same establishments as her peers, is then blamed for those same decisions. In fact, it is hard to imagine a situation today where otherwise typical behaviour and choices might not be argued as inviting sex.

### ***Children ‘lie’, ‘are easily confused’, and ‘can’t differentiate fact from fiction’***

Further presumptions impacting children in the legal process have also been documented by Luchjenbroers and Aldridge (2007, 2013; and Aldridge & Luchjenbroers 2007). These are frequently triggered or said outright in trials with children, such as (4) and (5) below.

(4) *I want to suggest to you that you’re making that little bit up, C. Do you understand? That’s not true, is it?*

In this sexual assault case, the barrister relies heavily on the suggestion that the child may be confused by the questioning (Do you understand) as well as the assertion that the child is lying. To what end, however, is not explored or explained.

(5) *Tell us how the game worked .... Did he touch your nose?*

In (5), the 12 year old girl in a sexual assault case is questioned about the defendant’s prior activities that involved play. Although the child claimed that the event in question went beyond play, the child is portrayed as confused about this defendant’s behaviours, and the defendant is portrayed as an upstanding, innocent man. The barrister later asserts to the witness that anything sexual was confusion and a lie.

The specific research question to be addressed in this paper is to calculate how the underlying conceptual frames and metaphors triggered by questions put to children in the legal process can prejudice against those same children and/or their actions. In addition, we will also consider these frames in media reports of rape/sexual assault trials.

## **4. DATA**

### ***Child Data***

The material used in this paper is drawn from a data bank of police and court transcripts from ca. 2000, involving sexual and physical assault cases with children from between



three and fourteen years of age. The extracts included in this paper are from the official transcripts taken from videotaped interviews and those taken from the Cross-Examination phase of courtroom interactions. Throughout, “P” is the policeman/woman and “C” is the child witness, and “B” is the questioning barrister in court.

Particular features of these testimonies from children include that they have significant difficulty in (i) providing an account that is frame consistent and (ii) making appropriate, strategic choices about what to convey and what to withhold. We have been concerned with the questions put to child witnesses concerning their sexual history, and to what extent these questions ‘normalise’ sex between adults and minors.

### ***Rape case Reports given in the Media***

In addition to the child data we will also consider a range of media reports made by judges, barristers and others involved in rape cases. We also consider these in terms of the conceptual frames and ICMs discussed in the cases involving children.

## **5. Police and Barrister Questioning**

In these analyses, a number of ‘rape’ ICM components have emerged in the questioning of the children in our data. The first, prominent in the police questioning of a 14 year old girl, is the notion that prior sexual experience in a child rape case, such as (6) below.

(6) “P”: *You told me earlier on you were on the game or had been on the game*

“C”: I’ve never been on the game

“P”: *Never been on the game?*

“C”: I have never taken money for sex, ever

As the age of consent in the UK is 16 and (if the accused is convicted) a matter of ‘statutory rape’, the issue of consent is used in court for sentencing where a victim (i.e., child’s) consent is looked upon as a ‘mitigating’ factor. The court’s reasoning is that in such sex events, there is no force so the event would be less damaging for the child. There are many problems with this line of questioning: (i) a witness’s prior sexual history may not be asked in court but is brutally questioned here; (ii) prior sexual history has no bearing on whether this was either rape or statutory rape; (iii) this is the video recorded police interview that would be shown in court as the victim’s Examination-in-chief but the questions sooner resemble what would be expected of the more hostile, Cross-examination; (iv) because sexual history has been raised in the Examination-in-chief, it is open to further scrutiny in the defense’s Cross-examination; and (v) physical wounds are not the only kind of trauma that can result from a sexual assault. The legal profession’s focus on sexual history is also captured in (7) below.

(7) “P”: *Have you ever done anything like that with anyone else before?*

“C”: No.

“P”: *Has anyone ever fingered you before?*

“C”: No.

“P”: *So, that was your first sexual encounter was it?*

What these questions capture is not only that children who are legally below the age of consent are questioned for evidence of consent, but for explicit details of their prior sexual history that has no bearing on the case under investigation, other than to assess whether the alleged victim is a 'true' victim. Essentially this suggests that evidence of prior sexual experience will diminish the claim of being raped, and also reinforces the rape ICM of a true victim as a chaste female. Drawing then on the 'rape' ICM (as captured by the Rape myth) only a child with no prior sexual experience (or adult women with little or no sexual history) can be a 'true' victim; and (as captured by the Autonomous Testosterone myth) a woman with prior sexual history must be seen as sufficiently, sexually provocative as to lure an unwitting man into a sex act. Unfortunately the focus on a child's sexual history (if there is one) entirely loses sight of the legal fact that in England and Wales, girls under 16 cannot consent to sex. Therefore, they are all victims of statutory rape; and any argument that sex with a sexually aware child isn't so bad, or not rape essentially argues that abusing the already abused is okay.

Further attributes of the Rape myth include the alleged victim's conduct, dress and other choices during the event in question, such as (8) through (12) below.

(8) "C": so I did and em and he started kissing me, started biting me again then he started ... [silence]

"P": *When it was happening, was the boat dark?*

The police question appears odd in the context of the child's narrative. The relevance of this question must therefore draw on the predictability of the alleged rapist's intent, if the lights were off. If the room is dark then sexual advances might be predicted and a true victim would have tried to escape (at least sooner than this child had done, despite being on a boat).

The following two examples draw on the alleged victim's choices concerning dress, thus drawing on the frame-based associations that a 'true' victim would dress appropriately and avoid dangerous circumstances where an attack might be preempted. Example (10) also comes from an attempted rape case involving an 11 year old boy.

(9) "P": *Can you tell me what you were wearing last night?*

"C": I was wearing my cream Reebok jumper and my check shirt and my blue jeans and my trainers

"P": *OK, did you have anything on underneath your shirt?*

(10) "P": *Alright OK. So it's a normal double bed is it?*

"C": [nods]

"P": *What were you wearing?*

"C": my pyjamas

The following two examples draw on additional assumptions from the Rape myth regarding a 'true' victim's choices regarding how much to drink (11) and how hard she will fight an attacker off, leaving wounds as evidence (12).

(11) “P”: *Going back to when you were on the boat, how much of the brandy did you think you had?*

“C”: just half a mouthful

“C”: *What about cigarettes? Did you have a cigarette on the boat?*

(12) “P”: *OK so what are your injuries as a result of last night?*

In addition, the Autonomous Testosterone myth was also clearly evident in these testimonies. The questions above relating to the child’s state of dress bare on this myth (cf. 9-10), as do questions concerning the witness (regardless of age and experience) being responsible for ‘reading’ the scene for possible threats (cf. 8 and 13 below). These examples illustrate how the child is held responsible for properly reading the situation. If we assume that she had understood, then she was consenting and this wasn’t rape; and if she didn’t want sex, then she failed to alert the man properly (miscommunication).

(13) “P”: *Yeah OK, what was he wearing?*

Added to these are police and barrister questions or assertions that convey that the child is either lying or is confused, such as (14) below. These involve a characterization of the defendant as an otherwise upstanding individual who cannot be guilty of such a crime. In this case the 10 year old witness holds firm to having been hit as well as others in the household having been hit. Nevertheless the barrister dismisses them all, and it is unclear in the child’s final contribution in this extract whether she contradicts the barrister’s assertion or accepts them.

(14) “B”: *Was it your mum who told you that XXX had hit (your sister)?*

“C”: No because I seen all of that in my mum’s room

“B”: *Are you sure?*

“C”: Yes.

“B”: *Has Nicola said to you “Well, XXX hit me”?*

“C”: No, I have tried to ask her things about it, but she says that she didn’t want to talk about it.

“B”: *I see. Because XXX didn’t hit (your sister), did he?*

“C”: When?

“B”: *When you told us that he did hit her, he didn’t really hit her, did he?*

“C”: he did

“B”: *And he didn’t hit you either, did he?*

“C”: Yes

The ultimate importance of these myths and the presumptions that jurors are invited to draw regarding the alleged victim and/or the alleged rapist in a particular case is that failure of some or any of the component features of these conceptual representations diminishes a claimant’s case and therefore the likelihood of conviction, which current trial statistics uphold. As jurors are directed to only find a defendant guilty “in the absence of reasonable doubt” being able to show in court that a claimant who appears, under questioning, to be a ‘normal’ sexual being who likes to be admired and thought of

as attractive, possibly 'sexy' can offer the court 'reasonable doubt' with just a suggestion that she 'might' have wanted sex all along.

Even though the rape ICM and its component elements that capture what characteristics are expected of a 'true' rapist and what characteristics are expected of a 'true' victim, these have involved false associations that society at large have condemned. In particular, adult standards of behavior are extended to children under 13 years of age, who do not always have the social expertise to always know how to act. Although we might assume that children of this age would be chaste, if they aren't it would only prove that they've been previously abused, which should increase their vulnerability (not decrease it). Unfortunately, this does not appear to be the court's thinking as it imposes lesser fines on the perpetrators in such cases. Similarly a child's dress seems an unfair barometer, such as the child who wears pajamas to bed, or the girl who may or may not wear something under her shirt and jeans. None of these can provide evidence for or against rape/sexual assault of a minor and yet in these cases the police must deal with these questions (sometimes apologizing to the child for doing so). The only possible relevance is to assess the child's case by assessing her, her actions and behaviours.

The following section deals with these issues as appearing in more recent media sources. The data used above could be dated as one can reasonably expect proceedings to have changed in the 17 or so years since those cases. However, the media reports suggest that very little has changed in that time.

### ***Current representations of Rape and 'consent' appearing in the Media***

Chief Crown Prosecutor for London, A. Saunder recently wrote:

"For too long society has blamed rape victims for confusing the issue of consent - by drinking or dressing provocatively for example - but it is not they who are confused, it is society itself and we must challenge that. Consent to sexual activity is not a grey area - in law it is clearly defined and must be given fully and freely." (DPP, Alison Sander 2015)

Unfortunately 'consent' is not at all clear among legal professionals or lay people, and remains a grey area. Compounding these problems are media reports, which surely influence if not school the public about rape situations, and which largely perpetuate the rape and autonomous testosterone myths identified in earlier research (cf. Aldridge & Luchjenbroers 2007, 2011; Benedict 1992; Ehrlich 2001; Franiuk et al., 2008; Luchjenbroers & Aldridge 2007, 2013; Matoesian 1993). For example, the fact that the victim is to blame headlined again in 2013 when Barrister Barbara Hewson wrote in Spiked magazine that Operation Yewtree (a police investigation into alleged sexual abuse, predominantly the abuse of children, by the British media personality Jimmy Saville and others) is in fact engaged in: "The persecution of old men". Even though Saville was in his 70's, so an 'old man',

this characterises the case against him as a pointless activity and diminishes any responsibility for past actions.

Barrister Hewson also continues:

"Touching a 17-year-old's breast, kissing a 13-year-old, or putting one's hand up a 16-year-old's skirt" are not crimes comparable to gang rapes and murders and "anyone suggesting otherwise has lost touch with reality".

Rather than denouncing the behaviour of the men's actions, Hewson calls for the lowering of the age of consent to 13. This is surely a worrying comment from a Barrister as it overlooks whether children as young as 13 have the capacity and freedom to consent – the whole premise of the law in the first place. Similarly, the following quote by Nick Ross adds:

"Half of all women who have had penetrative sex unwillingly do not think they were raped, and this proportion rises strongly when the assault involves a boyfriend, or if the woman is drunk or high on drugs: they went too far, it wasn't forcible, they didn't make themselves clear. For them, rape isn't always rape and however upsetting they feel, this is a long way removed from being systematically violated or snatched off the street."" (Ross 2013)

Ross starts with a characterisation of rape as 'not rape', so evidently 'no big deal', followed by a long abandoned feature of the Rape myth, that rape is only 'true' rape when committed by a stranger, who attacked unexpectedly. Even though this appears to be a misrepresentation of his views, the public will remember the claim (rape isn't always rape) not Ross' explanations. Furthermore, the report given in (15) goes one step further and, consistent with the Autonomous Testosterone myth, blames women for rape, in that molesters can apparently be recognized and therefore should be avoided, making the (alleged) victim to blame for failing to do so.

- (15) In an interview from jail, Mukesh Singh says 'women who go out at night have only themselves to blame if they attract the attention of gangs of male molesters. A girl is far more responsible for rape than a boy' (March 2015).

In (16) and (17) women who drink to excess or take drugs are "asking for it", even though this state makes them incapable of giving consent to sex. The men in these cases is not seen as an unseen and unknown attacker, even though this state would rob women of any active involvement in the decision to have sex.

- (16) CeeLo Green (2014) pleaded no contest to supplying ecstasy to a woman, and claimed that he had consensual sex with her, despite her saying she has no memory of the event.
- (17) A woman judge slams drunk rape victims because juries can't convict when women can't remember anything about the attack.  
<http://www.bbc.co/news/uk> (The Mail online 2014)

The sum of the above media quotes from persons directly involved in trying rape and sexual assault cases shows a very worrying development from more to substantially less protection by the law in such cases. The above appears to argue that light offences are no 'biggy' and pursuing old perpetrators pointless as are alleged victims who were drunk or on a drug high. This latter point is extraordinary given the specific wording of the law that holds that consent can only be given when the recipient is both willing and conscious. However all of these arguments fall outside the rape ICM that centres on what kind of people are 'true' victims or perpetrators of rape. The above statements are more driven by the running of the legal system and best won cases, which these types of scenarios are not. Nevertheless, they give a green light to those who might chose to carry out light offences or helping future victims get drunk or high.

In the examples below (18-23), the characterisations of a child as predatory are not uncommon, but it is fundamentally flawed by the overriding premise that children cannot consent to sex. As such, any child of 13 or even 16 should be seen as a vulnerable child and victim of the environment in which they had been raised, instead of someone who deserved blame and responsibility for the situation that they had been in.

- (18) During cross examination a barrister stated that a 13 year old girl was 'predatory' in all her actions and sexually experienced (2013).
- (19) Mowat, a judge who retired in 2014, deemed that a 13 year old girl 'made most of the running'.
- (20) In 2012 a judge, when sentencing a 49 year old man for raping a 12 year old girl, said the child had 'let herself down badly, she consumed far too much alcohol and took drugs.
- (21) In 2014 in a case with a 44 year old teacher and a 16 year old pupil the judge said that the teacher had violated a position of trust but she accused the girl of grooming the teacher 'it was she who groomed you'.
- (22) Barrister criticized for calling child abuse victim predatory. (Available from <http://www.bbc.co.uk> (07/08/13)
- (23) In 2013 a judge said a 16 year old groomed her teacher – that's nothing. (available at [Http://www.the-guardian.co.uk](http://www.the-guardian.co.uk) (2013).

Despite protests that much has been achieved in legal cases and the law regarding rape in general, and child cases of sexual assault and rape in particular, the above media extracts illustrate that a great deal of work is still required for courts and the media to move forward with the times to more accurately relate mainstream social views and behaviours, rather than schooling society with outdated perceptions. Essentially despite the year since the introduction of special measures meant to assist children in pursuing justice in the legal system, not much

has changed because the same rape ICMs are used in the questioning of children by the police and in court; and adult models of behaviour is often the standard held over children that they often cannot meet. Even though jurors may come to court with very different views, the possibility of consent is so actively pursued by the questioning by police and in court, that 'reasonable doubt' is successfully argued in many cases, and if the defendant is convicted it is often for a lesser crime.

## 6. STEPS FORWARD

In this paper we have illustrated, through police and court extracts and subsequently through more recent media extracts, that the rape ICM (conceptual frame network) of what constitutes a 'true' victim and a 'true' rapist (also captured in the rape myth plus the autonomous testosterone myth) remains largely unchanged due to the permitted and required questions posed by different parts of the judiciary. The perceptions that become accessible from this ICM continue to undermine both the social understanding of 'consent' and rape victims in general, through questions that encourage hearers/readers to sooner sympathize with the defendant than the (alleged) victim.

In recent years the courts have focused their attentions on attempts to define 'consent' as the solution to the poor conviction rates in such trials, but a full understanding of 'consent' remains elusive. On the basis of the material above, we suggest that the problem is sooner a need to promote an alternative ICM for 'consensual sex' (for adults) as opposed to the continued reliance on the rape ICM and its component elements; however so far none exist as it would be highly variable and entirely a product of individual tastes and desires. Nevertheless it is necessary because, it appears to be relatively easy to show jurors that at least 'some' of the rape ICM prevail (thus reinforcing similar associations in memory), and thereby creating 'reasonable doubt'.

More work is clearly needed in this domain.<sup>5</sup> Unfortunately, the judiciary is slow to change, despite the speed of public opinion changes. The judiciary also needs to make more amendments to the questioning of child witnesses, to ensure that only questions that either prove or disprove rape or sexual assault (regardless of what the child was wearing) instead of assessing the personal choices of the child in question.

## End Notes

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<sup>1</sup> David Cameron, reported by the BBC, November 12, 2007.

<sup>2</sup> See [http://www.cps.gov.uk/publications/prosecution/rape.html#\\_05](http://www.cps.gov.uk/publications/prosecution/rape.html#_05)

<sup>3</sup> We have both taught forensic linguistics modules for many years and students of both genders both scoff and are appalled that these prejudices in court still persist.

<sup>4</sup> Most of our work on rape and sexual assaults has focused on women; however we do not wish to argue that victims are only female or that rapists are only male.

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<sup>5</sup> Our work has continued in addressing the laws themselves concerning rape and minors, in terms of conceptual Frames and ICMs of expected network associations; as well as a small corpus study drawing on the social uses of the word ‘consent’. This work is nearing completion.



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